

Time Charterparty table

The IMO 2020 Global Sulphur Cap on bunkers and the impact on key charterparty terms:

Unless otherwise provided, the relevant clauses have been taken from the NYPE 46 and Shelltime4 standard form:

Key Issues	Relevant Standard Clauses	Considerations	BIMCO suggested possible solutions	INTERTANKO suggested possible solutions
Revocation of MARPOL certificates	<p>Shelltime4 Clause 1:</p> <p><i>"At the date of delivery of the vessel under this charter</i> <i>(a) she shall be classed;</i> ... <i>(g) she shall have on board all certificates documents and equipment required from time to time by any applicable law to enable her to perform the charter service without delay;</i></p> <p>Examples of additional clauses often negotiated between the parties:</p> <p><i>"Charterers warrant that no... operation, including...the use of bunkers to and by the vessel, will be unlawful under and/or in breach of any law or regulation of any applicable state, supranational or international governmental organisation (including but not limited to the United States of America, the European Union and the United Nation)."</i></p> <p><i>"(i)The ships would at all times fully comply with all legal requirements, including the IMO Convention on marine pollution, MARPOL and (ii) that they would have on board all certificates and documents required from time to time to enable them to perform the charter service without delays."</i></p>	<p>Flag States that have ratified Annex VI may revoke or suspend the vessel's MARPOL certificates if the ship fails to comply with the Regulation. A consequence of such revocation may include suspension or loss of her class.</p> <p>Failure to maintain necessary certificates required could also impact Owners' seaworthiness obligation and maintenance obligation. For example, if Owners deliver the ship with insufficient compliant fuel. Or, Charterers' failure to provide compliant fuel resulting in revocation of MARPOL certificates by the ship's flag state would make the ship legally unfit.</p> <p>It is also worth noting that Owners may face coverage issues under their H&M and P&I policies, if, for example, the ship is in breach of their seaworthiness obligation (although in terms of seaworthiness, it is generally more applicable to voyage policies than time policies).</p>	Not dealt with.	Not dealt with.
Crew competency	<p>Shelltime4 Clause 2(a):</p> <p><i>"At the date of delivery of the vessel...she shall have a full and efficient complement of master, officers and crew for a vessel of her tonnage... who shall be trained to operate the vessel and her equipment competently and safely..."</i></p>	<p>Owners will need to ensure that the crew is properly trained in carrying out their duties in relation to bunkering operations, including if scrubbers have been installed, training in relation to the operation and maintenance of scrubbers.</p> <p>Owners will need to ensure that proper records are maintained to verify that such training is taking place in order to minimise the scope for</p>	Not dealt with.	Not dealt with.

		disputes as to whether any eventual incidents are due to crew negligence or the fuel itself. In some cases, crew incompetency can also constitute unseaworthiness.		
Availability of compliant fuel	<p>NYPE Clause 2: “...Charterers shall provide and pay for all the fuel...”</p> <p>Shelltime4 Clause 7: “Charterers shall provide and pay for all fuel (except fuel used for domestic services) ...”</p> <p>Shelltime4 Clause 29: “Charterers shall supply marine diesel oil/fuel oil with...”</p>	<p>One of the key concerns of the shipping industry is whether compliant fuel will be readily available. The risk is heightened for ships that trade in remote areas.</p> <p>Given the risk of non-availability of compliant fuel, Charterers should consider how best to minimise any disruption to their intended voyage by early consideration given the need to bunker more regularly or to travel to a further bunkering location to obtain required fuel and associated costs.</p> <p>Various refineries are currently using different refining/blending techniques to produce compliant fuel. These new stocks of fuel are currently unknown to the market and it is quite possible that this may cause increased disputes around fuel stability and compatibility – the result of that could range from inconvenience and loss of time to more catastrophic events.</p> <p>Both BIMCO and INTERTANKO clauses allocate the responsibility of providing sufficient compliant fuel to the vessel on Charterers to enable the vessel to comply with the Regulation. Provided that Charterers comply with the same, Owners are responsible for also complying with the Regulation. These clauses, however, do not adequately deal with situations where it is not possible for Charterers to stem sufficient compliant fuel. Early negotiations between the parties as to how best to deal with such eventualities may be useful.</p>	See BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties here .	See Clause 1 of the INTERTANKO Bunker Compliance Clause for Time Charterparties here .
Off-spec/ incompatibility/ contamination bunker claims	<p>NYPE Clause 2: “...Charterers shall provide and pay for all the fuel...”</p> <p>Shelltime4 Clause 7: “Charterers shall provide and pay for all fuel (except fuel used for domestic services) ...”</p> <p>Shelltime4 Clause 1: “At the date of delivery of the vessel under this charter (e) she shall be in every way fitted for burning at sea - fueloil with a maximum viscosity of...Centistokes at 50 degrees Centigrade/any commercial grade of fueloil (“ACGFO”) for main propulsion, marine diesel oil/ACGFO for auxiliaries in port - marine diesel oil/ACGFO for auxiliaries;</p>	<p>Given the introduction of a vast range of blended Low Sulphur Fuel Oil (“LSFOs”), there is a heightened risk of incidents arising out of bad bunkers. Early identification of suspect characteristics of the fuels from suppliers may assist in minimising the scope for dispute, but recent experience has shown that GCMS testing will often identify components in isolation or in small quantities that cause significant disputes. It is possible to have a bespoke clause to refer such disputes to a trusted expert/testing house. The difficulty here is that there are no hard and fast rules regarding the various constituents that GCMS testing is likely to throw-up and this may influence the chosen testing facility to decide one way or another. There may also be a perceived bias that particular testing facilities may show favour to regular and powerful clients. This is therefore not a panacea for happily resolving a claim, although it does have more finality. Owners and Charterers should expressly agree the permissible grade and specification of compliant fuel, and associated indemnity provisions in line with a specific bunker dispute resolution clause, in the event that the fuel is found to be non-compliant.</p>	<p>See BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties here.</p> <p>AND</p> <p>See BIMCO Bunker Quality Control Clause for Time Chartering here.</p>	See Clause 1 and 2.1 INTERTANKO Bunker Compliance Clause for Time Charterparties here .

	<p>Shelltime4 Clause 29:</p> <p><i>“Charterers shall supply marine diesel oil/fuel oil...<u>If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof</u>...Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with the international Marine Bunker Supply Terms and Conditions of Shell International Trading Company and with its specification of marine fuels as amended from time to time.” (emphasis added)</i></p>	<p>Express terms relating to sampling procedures should be reviewed to ensure that the bunkering operations are Annex VI compliant. It is imperative that correct sampling procedures are followed in order to ensure that the samples are representative of the fuel as a whole. The parties may wish to have a specific clause regarding fuel testing, given the use of the new types of fuel. Also, having sufficient samples and volume of samples is key when a contamination dispute arises. Also, be mindful that overly onerous procedures are unlikely to be followed.</p> <p>Often, there will be a time-bar clause which will allow Owners only a short period to make any claims against Charterers following bunkering or testing. Given the potential rise in bunker disputes and associated delay in obtaining any fuel test results (as we have recently experienced), it is recommended that such clauses are reviewed. Although it may be in Charterers’ interests to have a very short period, something that is commercially much more sensible i.e. longer should be agreed – with the current problems being experienced 6 months should be an absolute minimum and, preferably, 1 year. This will no doubt have a knock-on effect for Charterers with their suppliers.</p> <p>The BIMCO produced clause is aimed at addressing the obligations of Owners and Charterers to deal with general compliance of the Regulation. While this is helpful, considering the heightened risk of operating on LSFOS, more comprehensive clauses should be sought to pre-empt the key risks, including responsibilities and costs associated with correct sampling, tank cleaning protocols, possible need for additional fuel tanks and crew training requirements.</p>		
<p>Disputes over responsibility for managing and segregating different fuels on board / debunkering of the non-compliant fuel</p>	<p>Not dealt with.</p>	<p>Both BIMCO and INTERTANKO have produced clauses addressing the requirement to provide sufficient compliant fuel by the D-date (i.e. end of 2019 to the beginning of 2020). BIMCO Transition Clause touches upon how the parties should cooperate to discharge the non-compliant fuel carried onboard the vessel before the deadline of 1 March 2020. Both BIMCO and INTERTANKO clauses, however, would not work with vessels that have installed scrubbers or that might decide to do so mid charterparty.</p> <p>In addition, Owners and Charterers should consider potential arguments that could arise under Clause (c)(ii) of the BIMCO Fuel Transition Clause as it is currently for Owners to ensure that logistically they will be able to dispose of any un-pumpable fuel, whilst following Charterers’ orders as to employment of the vessel. Parties could potentially benefit from having a “get-out” clause which reasonably deals with, for example, unavailability of reception facility to discharge un-pumpable sludge.</p> <p>Also, Owners and Charterers should consider at early stages whether there will be sufficient tank capacity to carry compliant fuel and non-compliant fuel during the transitional period to minimise the scope for</p>	<p>See Clause (b) BIMCO 2020 Fuel Transition Clause for Time Charter Parties here.</p>	<p>See Clause 2.1(c) INTERTANKO Bunker Compliance Clause for Time Charterparties here.</p>

		disputes. It may be that Owners will wish to install additional fuel tanks to ensure sufficient segregated storage space is available. Any such installation would affect the available space onboard the vessel and therefore Owners and Charterers with charter arrangements that will cross over to 2020, should discuss any issues arising out of the need for additional fuel tanks early.		
Disputes over payment of financial penalties / detention or arrest	Not dealt with.	<p>The non-compliant vessels are likely to be subject to financial penalties by the Port States that have ratified the Regulation. The financial penalties will vary between the Port States.</p> <p>Both parties will wish to have any fines paid promptly in order to ensure that their vessel is not subject to detention or arrest. The contract terms should be reviewed to ensure clear allocation of these risks.</p> <p>Both BIMCO 2020 Marine Fuel Sulphur Content Clause and INTERTANKO Clause 1.4 provide that Charterers are to indemnify Owners for any losses, liabilities including fines arising from Charterers' failure to comply with the sulphur regulation.</p> <p>INTERTANKO also expressly provides that, subject to Charterers' compliance with their obligations including the obligations to provide compliant fuel, Owners are to indemnify Charterers for "any loss, liability, damage, fines, delay, deviation, cost or expense arising from or connected to Charterers' failure to comply with" their obligations relating to, amongst other things, compliance with the Regulation, proper segregation of fuel until a compatibility test has been carried out.</p> <p>It is worth noting that unless already sufficiently addressed elsewhere in the charter, usual limitation and exclusion of liability clauses should be negotiated to reduce the risk of liability to the counterparty.</p>	See Clause (d) BIMCO 2020 Fuel Transition Clause for Time Charter Parties here .	See Clauses 1.4 and 2.2 INTERTANKO Bunker Compliance Clause for Time Charterparties here .
Scrubber	Not dealt with.	<p>Where the relevant vessel is retrofitted with scrubbers to comply with the Regulation, Owners and Charterers will need to review the contract terms in order to ensure that the contract adequately allocates the responsibilities and costs associated with the installation (including dry docking and off-hire clauses) of the scrubber, maintenance and repair of the same, contingency plans to meet the Regulation in the event of a breakdown of the scrubber etc, costs associated with the additional energy consumption. Charterers may also wish to specifically request information relating to characteristics of the scrubber.</p> <p>Note that the BIMCO 2020 Fuel Transition Clause for Time Charter Parties and INTERTANKO Bunker Compliance Clause for Time Charterparties are not suitable where scrubbers are being utilised.</p>	BIMCO have announced that they are working on a standard scrubber clause. This clause was due to be released around March/April 2019. We await the announcement.	Not dealt with.
Redelivery Issues	<p>NYPE Clause 3:</p> <p><i>"...Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining</i></p>	Redelivery issues are partly dealt with in the BIMCO 2020 Fuel Transition Clause for Time Charter Parties set out above – i.e. <i>"Owners and Charterers shall cooperate and use reasonable endeavours so that no</i>	See Clause (b) BIMCO 2020 Fuel Transition Clause for Time	See INTERTANKO Bunker Compliance

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	<p><i>on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than...tons and not more than...tons and to be re-delivered with not less than...tons and not more than... tons."</i></p> <p>Shelltime4 Clause 15:</p> <p><i>"Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery...accept and pay for all bunkers remaining on board, at the then-current market prices at the port of delivery or redelivery..."</i></p>	<p><i>later than the Effective Date there shall be no Non-Compliant Fuel carried for use by the Vessel".</i></p> <p>While using BIMCO 2020 Fuel Transition Clause, parties should consider what is to happen to any remaining non-compliant fuel at the time of re-delivery and payment obligation and actual liability of the vessel. As the usual clauses provide that Owners are to deliver with fuel and Charterers are to redeliver with fuel, consideration should be given to this in particular where the vessel is to be redelivered very close to 1 January 2020.</p> <p>Also, we anticipate a possible conflict between contractual provisions dealing with redelivery and BIMCO Transition Clause – particularly if redelivery happens on D-day or even (shortly) before that. There may be arguments that the BIMCO Transition Clause only applies if charterparty goes beyond the Effective Date and disputes the situation in which completion of the charterparty is very close to the Effective Date.</p> <p>The INTERTANKO clauses contain more comprehensive provisions relating to issues arising before and after the D-Date. For example, under the "Additional provisions for Vessels to be redelivered in 2019", Charterers are responsible to redeliver the ship:</p> <ul style="list-style-type: none"> a) with sufficient compliant fuel for the Vessel; and b) with only an agreed maximum amount of non-compliant fuel onboard. <p>In addition, Owners are expressly given the right to prepare the Vessel to receive compliant fuel. This, however, will be at Owners' expense and only provided that such operation does not interfere with Charterers' operation.</p> <p>Under "Additional provisions for Vessels to be redelivered after 31 December 2019", INTERTANKO provides a mechanism whereby Owners and Charterers are able to agree an advance timeline for planning the introduction of compliant fuel. This clause allocates the responsibility and costs of removal of high sulphur fuel oil on Charterers whilst Owners are to pay for any tank cleaning necessary to receive compliant fuel.</p> <p>In circumstances where the redelivery date is uncertain (e.g. due to option provisions to extend the charter/extension of charter period following any periods of off-hire etc), it is recommended that the parties consider both pre and post 1 January 2020 implications when negotiating their charterparty terms.</p>	<p>Charter Parties here.</p>	<p>Clause for Time Charterparties':</p> <p>1) Additional provisions for Vessels to be redelivered in 2019; and</p> <p>2) Additional provisions for Vessels to be redelivered after 31 December 2019</p> <p>here.</p>
Insurance	<p>NYPE Clause 1:</p> <p><i>"That the Owners shall provide and pay for...the insurance of the vessel..."</i></p> <p>NYPE Clause 26:</p>	<p>It is worth noting that Owners may face coverage issues under their H&M and P&I policies if, for example, the vessel is in breach of their seaworthiness obligation (although generally more applicable to voyage policies than time policies), the vessel's MARPOL certificate is revoked by the Flag State or the vessel's Class is suspended or lost.</p>	Not dealt with	Not dealt with

	<p><i>"...The owners to remain responsible for the...insurance...for their own account."</i></p> <p>Shelltime4 Clause 6:</p> <p><i>"Owners undertake to provide and to pay for...all insurance on the vessel..."</i></p>			
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Voyage Charterparty table

The IMO 2020 sulphur cap on bunkers and its impact on key charterparty terms:

Unless otherwise provided, the relevant clauses have been taken from the Gencon94 standard form:

Key Issues	Relevant Standard Clauses	Considerations
	The following clauses are for illustration purposes only. Depending on your particular charterparty, please seek independent legal advice.	
Crew competency	<p>Clause 2:</p> <p><i>"... due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied..."</i></p>	Owners should ensure that the vessel's crew are properly trained to deal with the new bunkering processes/operation of scrubber systems. Failure to provide such training may expose Owners to unseaworthiness claim.
Availability of compliant fuel	<p>Clause 3:</p> <p><i>"The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property."</i></p>	<p>Under a voyage charter, the consequences of a deviation not authorised by the contract can be drastic – i.e. Charterers can often terminate the charter. Even if the charter is not terminated, it is possible that some of the exclusions or limitations of liability intended to protect the Owners may cease to apply.</p> <p>Therefore, Owners should consider negotiating an express clause allowing them to deviate for the purpose of obtaining compliant fuel or for any repairs / maintenance required to the scrubber systems. This is particularly important in light of Regulation 18.2 of Annex VI, which provides that the vessel should not be required to deviate from its intended voyage or to delay unduly in order to obtain compliant fuel. Care should be taken when drafting such clauses to ensure that notwithstanding Regulation 18.2, the Owners are allowed to deviate.</p>
Freight	<p>Clause 4:</p> <p><i>"(a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo..."</i></p>	Owners will wish to increase the freight rate to reflect the increased costs of stemming compliant fuel.